

**ASSEMBLY BILL**

**No. 1954**

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**Introduced by Assembly Members Skinner and V. Manuel Perez**

February 17, 2010

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An act to amend Sections 399.2.5 and 399.12 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1954, as introduced, Skinner. Electrical transmission: renewable energy resources.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, the Public Utilities Act, prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law requires the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard. That law additionally requires the CPUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory

Commission are fully reflected in any retail rates established by the commission.

This bill would require the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard. The bill would require the CPUC to provide assurance of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of transmission facilities in certain circumstances and to allow recovery in retail rates of any increase in transmission costs if not approved by the Federal Energy Regulatory Commission if the CPUC determines the costs were prudently incurred pursuant to a specified law.

This bill would revise and recast certain of the definitions applicable to the California Renewables Portfolio Standard Program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 399.2.5 of the Public Utilities Code is  
2     amended to read:  
3     399.2.5. (a) ~~Notwithstanding any other provision in Sections~~  
4     1001 to 1013, inclusive, an application of an electrical corporation  
5     for a certificate authorizing the construction of new transmission  
6     facilities ~~shall be deemed to be~~ is necessary to the provision of  
7     electric service for purposes of ~~any determination made under~~  
8     Section 1003 if the commission finds that the new facility is  
9     *reasonably necessary or appropriate* to facilitate achievement of  
10    the ~~renewable power goals~~ *renewables portfolio standard*  
11    established in Article 16 (commencing with Section 399.11).  
12    (b) With respect to a transmission facility described in  
13    subdivision (a), the commission shall take all feasible actions to  
14    ensure that the transmission rates established by the Federal Energy  
15    Regulatory Commission are fully reflected in any retail rates  
16    established by the commission. These actions shall include, ~~but~~  
17    ~~are not limited to~~ *all of the following*:

1 (1) Making findings, where supported by an evidentiary record,  
2 that those transmission facilities provide benefit to the transmission  
3 network and are *reasonably necessary or appropriate* to facilitate  
4 the achievement of the renewables portfolio standard established  
5 in Article 16 (commencing with Section 399.11).

6 (2) Directing the utility to which the generator will be  
7 interconnected, where the direction is not preempted by federal  
8 law, to seek the recovery through general transmission rates of the  
9 costs associated with the transmission facilities.

10 (3) Asserting the positions described in paragraphs (1) and (2)  
11 to the Federal Energy Regulatory Commission in appropriate  
12 proceedings.

13 ~~(4) Allowing~~ *Providing assurance, prior to a determination of*  
14 *rate recovery by the Federal Energy Regulatory Commission*  
15 *(FERC) of those costs that are subject to FERC jurisdiction, of*  
16 *the eligibility for recovery in retail rates of any increase in*  
17 *transmission costs incurred by an electrical corporation resulting*  
18 *from the construction of the transmission facilities that are not*  
19 *approved for recovery in transmission rates by the Federal Energy*  
20 *Regulatory Commission after the commission determines that the*  
21 *costs were prudently incurred in accordance with subdivision (a)*  
22 *of Section 454. This assurance shall be conditioned upon the*  
23 *commission's subsequent determination that the requirements of*  
24 *paragraph (5) have been met.*

25 (5) *Allowing recovery in retail rates of any increase in*  
26 *transmission costs if the FERC does not approve recovery of those*  
27 *costs in the rates that are subject to FERC jurisdiction after the*  
28 *commission determines that the costs were prudently incurred in*  
29 *accordance with subdivision (a) of Section 454.*

30 (c) (1) *The commission shall approve an advice letter seeking*  
31 *assurance of cost recovery pursuant to paragraph (4) of*  
32 *subdivision (b), if either of the following is true:*

33 (A) *The new transmission line or facility will primarily deliver*  
34 *electricity generated within a competitive renewable energy zone*  
35 *identified in the public collaborative stakeholder planning process*  
36 *known as the Renewable Energy Transmission Initiative (RETI).*

37 (B) *The new transmission line or facility is needed to deliver*  
38 *electricity to load that is to be generated by generation facilities*  
39 *for which the electrical corporation has received interconnection*  
40 *requests if not less than 50 percent of the capacity is for delivery*

1 *of electricity generated by eligible renewable energy resources*  
2 *and all of the interconnection requests are for generation facilities*  
3 *that are designed to comply with the greenhouse gases emission*  
4 *performance standard established by the commission pursuant to*  
5 *Chapter 3 (commencing with Section 8340) of Division 4.1.*

6 *(2) Approval of an advice letter pursuant to paragraph (1) is*  
7 *not binding upon the commission in making its determination*  
8 *whether or not to approve an application for a certificate of public*  
9 *convenience and necessity pursuant to Chapter 5 (commencing*  
10 *with Section 1001).*

11 SEC. 2. Section 399.12 of the Public Utilities Code is amended  
12 to read:

13 399.12. For purposes of this article, the following terms have  
14 the following meanings:

15 (a) “Conduit hydroelectric facility” means a facility for the  
16 generation of electricity that uses only the hydroelectric potential  
17 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other  
18 manmade conduit that is operated to distribute water for a  
19 beneficial use.

20 (b) “Delivered” and “delivery” have the same meaning as  
21 provided in subdivision (a) of Section 25741 of the Public  
22 Resources Code.

23 (c) “Eligible renewable energy resource” means an ~~electric~~  
24 *electrical* generating facility that meets the definition of an “in-state  
25 renewable electricity generation facility” in Section 25741 of the  
26 Public Resources Code, subject to the following limitations:

27 (1) (A) An existing small hydroelectric generation facility of  
28 30 megawatts or less shall be eligible only if a retail seller or local  
29 publicly owned electric utility owned or procured the electricity  
30 from the facility as of December 31, 2005. A new hydroelectric  
31 facility is not an eligible renewable energy resource if it will cause  
32 an adverse impact on instream beneficial uses or cause a change  
33 in the volume or timing of streamflow.

34 (B) Notwithstanding subparagraph (A), a conduit hydroelectric  
35 facility of 30 megawatts or less that commenced operation before  
36 January 1, 2006, is an eligible renewable energy resource. A  
37 conduit hydroelectric facility of 30 megawatts or less that  
38 commences operation after December 31, 2005, is an eligible  
39 renewable energy resource so long as it does not cause an adverse

1 impact on instream beneficial uses or cause a change in the volume  
2 or timing of streamflow.

3 (2) A facility engaged in the combustion of municipal solid  
4 waste shall not be considered an eligible renewable resource unless  
5 it is located in Stanislaus County and was operational prior to  
6 September 26, 1996.

7 (d) “Procure” means ~~that to acquire through ownership or~~  
8 ~~contract. For purposes of meeting the renewables portfolio~~  
9 ~~standard procurement requirements,~~ a retail seller or local publicly  
10 owned electric utility ~~receives may procure either~~ delivered  
11 electricity generated by an eligible renewable energy resource that  
12 it owns or for which it has entered into an electricity purchase  
13 agreement. Nothing in this article is intended to imply that the  
14 purchase of electricity from third parties in a wholesale transaction  
15 is the preferred method of fulfilling a retail seller’s obligation to  
16 comply with this article or the obligation of a local publicly owned  
17 electric utility to meet its renewables portfolio standard  
18 implemented pursuant to Section 387.

19 ~~(e) “Renewables portfolio standard” means the specified~~  
20 ~~percentage of electricity generated by eligible renewable energy~~  
21 ~~resources that a retail seller is required to procure pursuant to this~~  
22 ~~article or the obligation of a local publicly owned electric utility~~  
23 ~~to meet its renewables portfolio standard implemented pursuant~~  
24 ~~to Section 387.~~

25 ~~(f)~~  
26 (e) (1) “Renewable energy credit” means a certificate of proof  
27 *associated with the generation of electricity from an eligible*  
28 *renewable energy resource*, issued through the accounting system  
29 established by the Energy Commission pursuant to Section 399.13,  
30 that one unit of electricity was generated and delivered by an  
31 eligible renewable energy resource.

32 (2) “Renewable energy credit” includes all renewable and  
33 environmental attributes associated with the production of  
34 electricity from the eligible renewable energy resource, except for  
35 an emissions reduction credit issued pursuant to Section 40709 of  
36 the Health and Safety Code and any credits or payments associated  
37 with the reduction of solid waste and treatment benefits created  
38 by the utilization of biomass or biogas fuels.

39 (3) No electricity generated by an eligible renewable energy  
40 resource attributable to the use of nonrenewable fuels, beyond a

1 de minimis quantity, as determined by the Energy Commission  
2 *for each renewable energy technology, to optimize reliable*  
3 *integration and efficiency of electrical production from eligible*  
4 *renewable energy resources*, shall result in the creation of a  
5 renewable energy credit.

6 (f) “Renewables portfolio standard” means the specified  
7 *percentage of electricity generated by eligible renewable energy*  
8 *resources that a retail seller is required to procure pursuant to*  
9 *this article or the obligation of a local publicly owned electric*  
10 *utility to meet its renewables portfolio standard implemented*  
11 *pursuant to Section 387.*

12 (g) “Retail seller” means an entity engaged in the retail sale of  
13 electricity to end-use customers located within the state, including  
14 any of the following:

15 (1) An electrical corporation, as defined in Section 218.

16 (2) A community choice aggregator. The commission shall  
17 institute a rulemaking to determine the manner in which a  
18 community choice aggregator will participate in the renewables  
19 portfolio standard program subject to the same terms and conditions  
20 applicable to an electrical corporation.

21 (3) An electric service provider, as defined in Section 218.3,  
22 for all sales of electricity to customers beginning January 1, 2006.  
23 The commission shall institute a rulemaking to determine the  
24 manner in which electric service providers will participate in the  
25 renewables portfolio standard program. The electric service  
26 provider shall be subject to the same terms and conditions  
27 applicable to an electrical corporation pursuant to this article.  
28 Nothing in this paragraph shall impair a contract entered into  
29 between an electric service provider and a retail customer prior to  
30 the suspension of direct access by the commission pursuant to  
31 Section 80110 of the Water Code.

32 (4) “Retail seller” does not include any of the following:

33 (A) A corporation or person employing cogeneration technology  
34 or producing electricity consistent with subdivision (b) of Section  
35 218.

36 (B) The Department of Water Resources acting in its capacity  
37 pursuant to Division 27 (commencing with Section 80000) of the  
38 Water Code.

- 1 (C) A local publicly owned electric utility.

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